

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CESAR MERCEDES,

Civil Action No.: 23-CV-4766

Plaintiff,

v.

**[PROPOSED]  
DEFAULT JUDGMENT**UNDERGROUND LIQUIDATION INC. dba  
MAGIC MATTRESS R US,

Defendant.

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WHEREAS this action commenced on June 6, 2023 by the filing of the Complaint;

WHEREAS serve of the Summons and Complaint on Defendant on October 3, 2023, by personally serving Defendant's General Agent pursuant to Federal Rules of Civil Procedure 4(h)(1)(B);

WHEREAS Defendant has failed to answer or otherwise respond to the Complaint and the time to do so has expired;

WHEREAS, Defendant is neither an infant or incompetent, and Defendant is not in the military service of the United States;

WHEREAS on December 21, 2023, the Clerk of the Court entered a Certificate of Default against Defendant;

WHEREAS copies of the Declaration of Andrew R. Frisch in Support of Entry of Default Judgment executed on December 21, 2023 (the "Frisch Declaration"), the exhibits thereto, the Proposed Order to Show Cause and the Proposed Default Judgment were sent to Defendant by (a) U.S. Certified Mail, Return Receipt at 1080 Brook Avenue, Bronx, NY 10456;

WHEREAS having failed to timely answer or respond to the Complaint, the Defendant is deemed to have admitted all the well-pleaded factual allegations in Plaintiff's Complaint except for allegations relating to damages;

WHEREAS this Court entered an Order to Show Cause on December 22, 2023, requiring Defendant to show cause on January 26, 2024 at 10:00a.m./p.m., why an Order should not be entered (i) entering default judgment against Defendant pursuant to Rule 55(b) of the Federal Rules of Civil Procedure and Local Rule 55.2(b); (ii) adjudging Defendant liable for Plaintiff's claims; (iii) awarding Plaintiff damages in the amount to be determined at a hearing to be scheduled to determine the amount of damages pursuant to FRCP 55(b)(2)(B); and (iv) granting such other relief as the Court deems just and proper;

WHEREAS Defendant did not appear on January 26, 2024, nor did Defendant file opposition papers with this Court on or before January 19, 2024, as required by the Order to Show Cause;

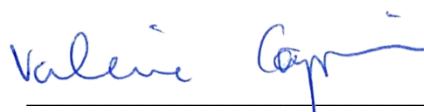
WHEREAS the Court will refer the case to Magistrate Judge Aaron for an inquest to determine the amount of damages and fees to which Plaintiff is entitled;

WHEREAS the court having considered the Complaint in this action, the Frisch Declaration and its accompanying exhibits, and the entire record of this action, it is hereby:

**ORDERED** that a default judgment be entered against Defendant pursuant to FRCP 55(b) and Local Rule 55.2(b).

**SO ORDERED.**

DATED: January 30, 2024

  
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Hon. Valerie E. Caproni  
United States District Judge